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Court COURT OF QUEEN'S BENCH OF ALBERTA

Judicial Centre CALGARY

Applicants IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

 AND IN THE MATTER OF POSEIDON CONCEPTS CORP.,
POSEIDON CONCEPTS LTD., POSEIDON CONCEPTS LIMITED
PARTNERSHIP AND POSEIDON CONCEPTS INC.

Document TWENTY-FIFTH REPORT TO THE COURT SUBMITTED BY
PRICEWATERHOUSECOOPERS INC. IN ITS
CAPACITY AS MONITOR
DATED July 20, 2015

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1. INTRODUCTION

- 1.1 On April 9, 2013, on the application of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership and Poseidon Concepts Inc. (collectively referred to as "**Poseidon**" or the "**Company**"), the Court of Queen's Bench of Alberta (the "Canadian Court") made an order (the "**Initial Order**") granting Poseidon protection from its creditors pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**"). Under the Initial Order, PricewaterhouseCoopers Inc. ("**PwC**") was appointed monitor of the Company (the "**Monitor**").
- 1.2 Subsequently, a recognition order was granted by the U.S. Bankruptcy Court (the "**U.S. Court**") under Chapter 15 of the U.S. Bankruptcy Code recognizing Canada as the foreign main proceeding.
- 1.3 Pursuant to the Initial Order, among other things, all creditors were stayed from commencing or continuing any proceedings against Poseidon until May 9, 2013. Subsequent orders were granted by the Court extending the stay of proceedings to July 31, 2015.
- 1.4 The Monitor has issued twenty-four reports to date, two of which are unfiled confidential reports (the Sixth and Eleventh Reports). Copies of the filed reports are available from the Monitor's website, www.pwc.com/car-poseidon. All prescribed materials filed by Poseidon and the Monitor relating to this CCAA proceeding are available to creditors and other interested parties in electronic format on the Monitor's website. The Monitor will make regular updates to the website to ensure creditors and interested parties are kept current and to add prescribed materials as required.
- 1.5 This is the Monitor's Twenty-Fifth Report to the Court.
- 1.6 The purpose of this report is to advise the Court of the following:
 - 1.6.1 The status of the settlement of the U.S. lien claims;
 - 1.6.2 The status of the U.S. Claims Process;
 - 1.6.3 The status of the Mediation Process; and

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1.6.4 The Monitor's request for an extension of the Stay of Proceedings to September 30, 2015.

1.7 Unless otherwise stated, all monetary amounts noted herein are expressed in Canadian dollars.

2. STATUS OF THE U.S. LIEN CLAIMS

2.1 In the Monitor's Twentieth-Third Report, the Monitor updated the Court on the status of the U.S. lien claims filed in the U.S. Claims Process advising that the Lending Syndicate had settled with 6 of the 7 U.S. lien claimants, all of which were approved by the U.S. Court.

2.2 The remaining U.S. lien claimant is Rawx Inc. ("**Rawx**"). Rawx has asserted a lien claim totaling US\$494,788.65. We understand that settlement discussions continue between the Lending Syndicate and Rawx since the last report, but in the event a consensual resolution cannot be reached in the near future, the matter will be litigated.

2.3 The Monitor confirms that the full amount claimed by Rawx, totaling US\$494,788.65, continues to be held in trust by the Monitor pending either settlement of the claim or a determination of the validity of the claim by the U.S. Court.

3. STATUS OF THE U.S. CLAIMS PROCESS

3.1 As noted in the Monitor's Tenth Report dated August 9, 2013, on June 27, 2013, the Monitor applied to the U.S. Court for a claims process for U.S. creditors of the Company (the "**U.S. Claims Process**"). The U.S. Court granted an order setting a bar date for the filing of proofs of claim of August 22, 2013.

3.2 Pursuant to the order, the Monitor's U.S. legal counsel immediately served notice of the U.S. Bar Date Order to all known U.S. creditors and interested parties, along with a proof of claim form.

3.3 In light of the possibility of the Monitor putting forward a Plan of Compromise (discussed below), there are a number of claims filed in the U.S. Claims Process that the Monitor disputes.

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- 3.4 Accordingly, on March 24, 2015, the Monitor filed a motion with the U.S. Court seeking approval of a claims process by which objections to disputed claims filed in the U.S. Proceedings can be filed by the Monitor and litigated pursuant to the U.S. Bankruptcy Code and the U.S. Rules of Bankruptcy Procedure.
- 3.5 No objections to the Monitor's motion were filed by the April 17, 2015 objection date and on April 28, 2015 the U.S. Court granted the Claims Procedures Order.
- 3.6 The Monitor reviewed the claims filed in the U.S. Claims Process with its U.S. legal counsel and is proceeding to file omnibus objections with respect to certain claims that were filed but lacked documentary support, claims that were duplicate claims or claims that were filed in the U.S. Claims Process but should have been filed in the Canadian Claims Process.
- 3.7 The Monitor also anticipates filing in the near future omnibus objections against late-filing claims or claims that have been satisfied.

4. STATUS OF THE MEDIATION PROCESS

- 4.1 As described in previous reports, the Monitor through its counsel, has had several hundred communications with the primary stakeholders, being the Lending Syndicate, the Class Action Representatives, KPMG and counsel to the D&O Insurers regarding resolving the outstanding claims. Several potential types of Plan of Compromise (the "**Plan**") have been discussed. These communications have continued since the last extension application and some progress has been made.
- 4.2 The Monitor has received a substantial without prejudice commitment from one of the parties. Furthermore, a confidential written agreement amongst the Lending Syndicate, the Class Action Representatives and the Monitor has now been executed. This agreement provides a framework for resolution, but is subject to other agreements being concluded. The Monitor is currently engaged in the negotiation of those further agreements and hopes to return to court on a fully consensual basis, failing which direction from the court may be required.
- 4.3 The Monitor believes it is in the best interests of all parties that negotiations continue to ensure any proposed Plan is as valuable and as comprehensive as possible. It appears that advancing a Plan pursuant to the CCAA is the most effective means to accomplish

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these objectives. For certainty, the Monitor expressly does not waive the without prejudice and confidential nature of its settlement communications.

- 4.4 At present, the Monitor continues to be of the view that it is able, on behalf of Poseidon, and with the consent of the Lending Syndicate, to put forward a Plan to creditors. Progress has been made since the last extension application and the Monitor continues to be optimistic that it will be seeking such an order in the near future. As well, the Monitor is of the view that a 60 day extension is appropriate to maintain pressure on all parties to arrive at a resolution.

5. EXTENSION OF THE STAY OF PROCEEDINGS TO SEPTEMBER 30, 2015

- 5.1 The Monitor continues to be of the view the settlement of all or a significant part of the claims resulting from the activities of Poseidon and its directors and officers is best achieved through a Plan pursuant to the CCAA.
- 5.2 The Monitor notes that the primary secured creditor of Poseidon, being the Lending Syndicate, supports an extension to the stay of proceedings. At the time of the filing of this report, the Monitor is not aware of any opposition to the extension being sought.
- 5.3 Accordingly, the Monitor is of the view that an extension to the Stay of Proceedings is appropriate in order to finalize a settlement and potentially move towards submitting a Plan to the Company's creditors.
- 5.4 Assuming a settlement is achieved, additional time will be required to complete the following:
- 5.4.1 The settlement of the remaining U.S. lien claim filed in the U.S. claims process;
- 5.4.2 The filing of outstanding U.S. State sales tax returns in order to assist with the potential recovery of U.S. States sales tax refunds, if any;
- 5.4.3 The completion of the CCAA Claims Process, with the appropriate allowances for court applications in the event there are notices of dispute filed, including significantly, an application to determine that certain claims are "equity claims" if they cannot otherwise be resolved in the Plan;

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- 5.4.4 Attend to the other claims filed in the U.S. claims process, including review of the validity of the unsecured claims and notifying U.S. creditors of the same;
 - 5.4.5 The preparation and submission of a Plan to the Company's creditors;
 - 5.4.6 An application for Court approval to hold a meeting of creditors to consider the Plan;
 - 5.4.7 A creditors' meeting to vote on the Plan;
 - 5.4.8 An application for Court approval of the Plan at a Sanction Hearing;
 - 5.4.9 Implementation of the Plan and the discharge of the Monitor.
- 5.5 In view of the foregoing, the Monitor is of the view that an extension of the stay of proceedings to September 30, 2015 is appropriate.

6. REVISED CASH FLOW FORECAST

- 6.1 As a result of the proposed extension of the Stay of Proceedings to September 30, 2015, a revised cash flow forecast has been prepared by the Monitor which covers the period from July 26, 2015 to October 3, 2015 (the "**July 31, 2015 RCFF**"), attached as Appendix "A" to this report. The July 31, 2015 RCFF can be summarized as follows:

	<u>\$ 000's</u>
Other collections	<u>0</u>
Total Receipts	<u>0</u>
Potential priority claim payment	(993)
Estimated general and administrative disbursements	(30)
Estimated restructuring costs	(405)
Total Disbursements	(1,428)
Net Cash Flow for Period	(1,428)
Opening Net Cash Balance	<u>1,700</u>
Closing Net Cash Balance	<u>272</u>

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- 6.2 The July 31, 2015 RCFF contains a high-level estimate of the professional fees to be incurred by the Monitor and its counsel and the Lending Syndicate's counsel in respect of the costs of the Mediation Process incurred and outstanding to date, the proposed Claims Procedure as well as preparation and implementation of a Plan.
- 6.3 Based on the foregoing, the Monitor considers that the Company's liquidity appears sufficient for the forecast period.
- 6.4 The Monitor's conclusions of the July 31, 2015 RCFF pursuant to section 23 (1)(b) of the CCAA are as follows:
- 6.4.1 The July 31, 2015 RCFF attached as Appendix "A" to this report has been prepared for the purpose described in the Notes, using the Probable and Hypothetical Assumptions set out in Notes 1 to 4 to the July 31, 2015 RCFF.
- 6.4.2 Nothing has come to our attention that causes us to believe that, in all material respects:
- 6.4.2.1 The Hypothetical Assumptions are not consistent with the purpose of the July 31, 2015 RCFF;
- 6.4.2.2 As at the date of this report, the Probable Assumptions are not suitably supported or do not provide a reasonable basis for the July 31, 2015 RCFF, given the Hypothetical Assumptions; or
- 6.4.2.3 The July 31, 2015 RCFF does not reflect the Probable and Hypothetical Assumptions.
- 6.5 Since the July 31, 2015 RCFF is based on Assumptions regarding future events, actual results will vary from the information presented even if the Hypothetical Assumptions occur, and the variations may be material. Accordingly, the Monitor expresses no assurance as to whether the July 31, 2015 RCFF will be achieved. The Monitor also expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon by it in preparing this report.

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6.6 The July 31, 2015 RCFF has been prepared solely for the purpose described in the Notes to the July 31, 2015 RCFF, and readers are cautioned that it may not be appropriate for other purposes.

7. CONCLUSION

7.1 In view of the foregoing, the Monitor is of the opinion that an extension to the stay of proceedings is appropriate, and that it and the stakeholders involved have acted and continue to act in good faith and with due diligence.

7.2 The Monitor requests the Court approve an extension of the Stay of Proceedings to September 30, 2015.

This report is respectfully submitted this 20th day of July, 2015.

PricewaterhouseCoopers Inc.
Court Appointed Monitor of
Poseidon Concepts Corp. et al



Clinton L. T. Roberts, CIRP
Senior Vice President



Sean Fleming, CIRP
Senior Vice President

APPENDIX A

July 31, 2015 Revised Cash Flow Forecast

('000's) CDN WEEK ENDING	Forecast						Total
	Week 1	Week 2-3	Week 4-5	Week 6-7	Week 8-9	Week 10	
	1-Aug-15	15-Aug-15	29-Aug-15	12-Sep-15	26-Sep-15	3-Oct-15	
WEEKLY NET CHANGE IN CASH							
Total AR Collections and Other	-	-	-	-	-	-	-
Asset Sale Proceeds Transferred from Monitor	-	-	-	-	-	-	-
Draw on Interim Financing Facility	-	-	-	-	-	-	-
TOTAL RECEIPTS	-	-	-	-	-	-	-
Disbursements							
Potential Priority Claim Payments (liens and admin fee charge)	-	-	-	-	-	993	993
Total G&A Disbursements	5	-	20	-	5	-	30
TOTAL DISBURSEMENTS	5	-	20	-	5	993	1,023
NET CHANGE IN CASH FROM OPERATIONS	(5)	-	(20)	-	(5)	(993)	(1,023)
Total Restructuring Costs	-	100	25	125	-	155	405
NET CHANGE IN CASH	(5)	(100)	(45)	(125)	(5)	(1,148)	(1,428)
CUMULATIVE NET CHANGE IN CASH							
Net change in cash	(5)	(100)	(45)	(125)	(5)	(1,148)	(1,428)
Opening Cash Position	1,700	1,695	1,595	1,550	1,425	1,420	1,700
TOTAL ENDING CASH	1,695	1,595	1,550	1,425	1,420	272	272

NOTES

The Monitor, on behalf of Poseidon Concepts, has prepared this Cash Flow Projection based on the probable and hypothetical assumptions noted below. Consequently actual cash flow will likely vary from this projection with such variance being material.

- The potential priority claim payments represent a provision for the full amount of the remaining 1 U.S. lien claims filed as well as a secured claim of the IRS in respect of 2012 withholding taxes, both converted to \$CDN. The amount payable to the 1 remaining U.S. lien claimant could be lower subject to a final settlement with the Lending Syndicate or the determination of the U.S. Bankruptcy Court as to the validity of the lien claim.
- G&A disbursements include certain costs for data capture and preservation of records.
- Restructuring costs include the professional fees of the Monitor and the Monitor's legal counsel (Canada and U.S.), counsel for the Lending Syndicate. The ending cash balance totaling \$272K is anticipated to fund the administration of the plan of arrangement should a further extension be granted after July 30, 2015, and should such a plan be approved by the Court. If an extension is not granted, the surplus cash will be used to pay certain outstanding professional fees due to the Lending Syndicate's counsel.
- As noted in the Monitor's report, the Monitor believes there is agreement among some of the participants of the Mediation to conclude a transaction that could result in the receipt of settlement proceeds and a Plan of Compromise. However, as a settlement has not been finalized at this time, and the preliminary results of the Mediation remains confidential, the Monitor has not reflected the anticipated settlement proceeds in these cash flow projections.